

STATE OF MAINE

Before the Grievance Commission  
Grievance Commission  
Board of Overseers of the Bar  
File No. 88-K-94

|                               |   |                     |
|-------------------------------|---|---------------------|
| BOARD OF OVERSEERS OF THE BAR | ) |                     |
|                               | ) |                     |
| Petitioner                    | ) |                     |
|                               | ) |                     |
| vs.                           | ) | REPORT OF FINDINGS, |
|                               | ) | DETERMINATIONS, AND |
| JULIO DESANCTIS, III          | ) | ACTIONS OF PANEL D  |
|                               | ) |                     |
| Respondent                    | ) |                     |

On Tuesday, March 6, 1990, pursuant to due notice, Panel D of the Grievance Commission conducted a disciplinary hearing open to the public, pursuant to Maine Bar Rule 7(e)(2) to determine whether grounds existed for the issuance of a reprimand or whether probable causes existed for the filing of an information with respect to the misconduct alleged in the Petition filed in this case by Bar Counsel, which Petition was dated November 8, 1989. The Board of Overseers of the Bar was represented by assistant Bar Counsel, Karen G. Kingsley, Esq., and Respondent Julio DeSanctis, III appeared personally and represented himself in this proceeding.

Although Respondent filed a Motion to Enlarge the Time to Answer this proceeding on December 12, 1989, the Answer had been due December 8, 1989. The Motion to Expand the Time to Answer was denied and a New Motion to Enlarge was received by the Office of Bar Counsel January 4, 1990, and an Answer was received January 9, 1990, which Answer was in fact not personally signed by Respondent. A further Answer to the Bar Counsel's Petition

was received January 30, 1990, signed by Respondent. In spite of the delays and technical defaults in Respondent's Answer to the Petition, the Chairman of Grievance Commission Panel D and the Panel agreed to proceed with the hearing open to the public to allow Respondent his due process rights to be heard on the merits of the Petition.

Pending before the Panel at the time of the hearing were additional Motions as follows:

1. Motion in the Respondent's Answer to strike paragraphs 18, 19, 20, 21, and 24 of the Petition, which Motions to strike were denied.

2. Respondent had filed a Motion to Continue the hearing on the grounds that there were other pending proceedings involving a paternity question which Respondent felt was pertinent to his defense and the Chairman of Panel D reported that he had denied the Motion to Continue the week prior to the hearing on the grounds that the determination of the paternity issue was not relevant to the issues of ethical misconduct alleged in the Petition.

3. Respondent had also filed a Motion to Change the Venue from Augusta to Bangor which was denied. The Motions to Continue and to Change the Venue had been received February 26, 1990 a month after the mailing of the Notice of Hearing on January 25, 1990.

At the beginning of the hearing, the Petitioner and Respondent identified names of their witnesses and Respondent

asked for a sequester of the witnesses during the hearing and Petitioner had no objection to the sequester request.

After opening comments, the hearing proceeded with Bar Counsel calling as witnesses Respondent, Complainant Rebecca Rice and Bernard Rice.

#### FINDINGS OF FACT

Based on the pleadings and testimony, there was no dispute over the facts that on September 17, 1987, Ricky Rice, son of Rebecca and Bernard Rice, had died in an automobile accident at the age of 17, intestate, with the major asset of his estate being a potential claim against the driver of the automobile in which he died or a claim by a Personal Representative of the Estate for the benefit of spouse, minor children or heirs, if no spouse or children (18-A M.R.S.A. §2-804). Nor was it disputed that Respondent met with the Rices to discuss matters related to the death of their son, Ricky J. Rice, including the fact that the son, Ricky Rice, had allegedly had an intimate relationship with Marie LePage and at the time of his death, she was pregnant. There is no question that the Rices consulted with Respondent and discussed issues related to the Estate of Ricky Rice, the existence of a current girlfriend at the time of his death and an ex-girlfriend, Marie LaPage who was pregnant, as well as apparently questions of an Executor (Personal Representative) appointment and insurance and other matters. Mrs. Rice testified that Mr. DeSanctis said he would take care of what had to be started. Whether or not Mr. DeSanctis perceived himself as being

consulted as an attorney by the Rices personally or on behalf of the Estate of Ricky Rice, clearly the Rices considered their consultation with Mr. DeSanctis as disclosing information regarding the estate and the death of their son and related issues and seeking advice on how to proceed. Mrs. Rice also testified there was discussion of contingent fee arrangements but no contingent fee arrangement was signed. Subsequently the Rices were uncomfortable with Mr. DeSanctis as their counsel and withdrew from that representation consulting other counsel to file a Probate Petition on behalf of the Estate of their son, Ricky Rice and seeking the appointment of Rebecca Rice as Personal Representative (Executor). Some months later, as reflected by Board Exhibit 2, Respondent filed a Petition for Formal Probate in the Estate of Ricky J. Rice, on behalf of Petitioner Marie LaPage dated May 25, 1988, purporting to represent the Ricky Rice Estate. Further as reflected by Board Exhibit 1, Respondent filed a claim dated June 2, 1988 against the Estate of Ricky Rice on behalf of Richard LaPage claiming support from Estate of decedent Ricky Rice as the natural father of Richard LaPage. The formal probate proceeding and claim brought by Mr. DeSanctis related to a prior Informal Probate Petition with Rebecca Rice as Personal Representative which Petition had been filed by the Rices' new attorney and was dated November, 1987. (See Board Exhibit 3.)

Respondent has asserted as a defense that at all times he represented the entity described as the Estate of Ricky Rice.

After initially consulting with and undertaking a short lived representation of the Rices, in which it was obvious that there was a paternity issue regardless of how the pregnancy of Marie LaPage was perceived by the various parties, Respondent undertook representation of Marie LaPage, in her Formal Petition for Appointment as Personal Representative of the Estate of Ricky Rice, and then also filed a claim against the estate on behalf of the alleged child of Ricky Rice. There was no clear testimony by Respondent that in his short lived representation of the Rices, or subsequent representation of Marie LaPage, or as counsel for a claim of Richard LaPage, that Respondent identified and disclosed potential conflicts between the varying interests of the Rice's as possible heirs of their deceased son, Ricky Rice, representations of Marie LaPage in Petition for Formal Probate, or pursuing the claim against the estate on behalf of Richard LaPage. Such actions clearly reflect a failure to disclose conflicting interests and multiple employment. Respondent's assertion that he could not have represented the Rices because he was engaged to represent the Estate is absurd. The Rices, Marie LaPage or Richard LaPage were each entitled to be represented for whatever interests they may have had in the related estate proceedings. Whether Respondent felt he was representing the Rices or the estate in their initial consultation, there were certain confidences and details disclosed that were then utilized by Respondent in pursuing claims adverse to the Rices on behalf of Marie LaPage or Richard LaPage. For Respondent to

subsequently assert in a Formal Probate Petition that Rebecca Rice, who had first consulted Respondent, had lied in the Informal Probate Petition on the issue of paternity is a violation of his short lived representation of the Rices. In fact, Respondent himself in a claim filed for Richard LaPage indicated paternity was an uncertain issue yet to be decided by the District Court. Such conduct is clearly unworthy or dishonorable to his prior representation and clearly reflects the inconsistencies in Respondent's testimony. Respondent, in the course of the hearing, called numerous witnesses for the alleged purpose of questioning the credibility of Mr. and Mrs. Rice. The Panel found the purpose of such witnesses to be primarily to pursue the paternity issue which the Panel did not consider to be a relevant issue before it and an issue to be determined by another forum. The issues of ethical violations, including disclosure of information of a client, conflicts of interest or multiple representation, did not depend on the determination of paternity.

Following a Motion by Rebecca Rice's attorney to remove Respondent from representing any interest in the Ricky Rice Estate in June of 1988, Respondent moved to withdraw from acting as an attorney for any party in the proceeding, which Motion was granted after numerous continuances on the issue almost 10 months later on March 8, 1989.

Based on the focus of the questions by the Respondent of the Rices and other witnesses: 1) on the paternity issue, 2) the

presence of Marie LaPage's present counsel at the hearing open to the public, 3) Respondent's call of a person attending the hearing as a member of the public as a witness and then attempting to sequester him not having any idea of the purpose of the witness's testimony except to remove someone from the hearing under the sequestration issue, all raised serious questions in the minds of the Panel as to Respondent's motivations and credibility in the hearing. Respondent specifically denied in response to questions from the Panel that he had any Co-Counsel or shared fee arrangement with present counsel for Marie LaPage.

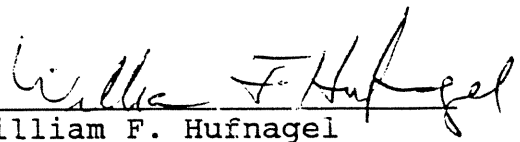
#### CONCLUSIONS

Based on the above Findings of Fact, the Panel concludes that Respondent has conducted himself in violation of the following Maine Bar Rules: 3.4(a)(b)(c)(e) and Rule 3.6(1).


#### DISPOSITION

In light of all the circumstances in this case, the Panel believes that a reprimand is warranted. The Respondent is hereby reprimanded and Bar Counsel is directed to forward a copy of this report to him forthwith and to file it with the Board of Overseers of the Bar.

Dated: April 20, 1990

  
William F. Hufnagel

  
Craig A. McEwen

  
Charles H. Abbott